Explanatory Notes

Legislative Proposals Relating to Income Taxation of Certain Trust and Estates

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

Trust loss restriction events

Excluded Provisions

ITA
94(4)(*b*)

Section 94 of the Act sets out rules that apply in determining whether paragraph 94(3)(*a*) deems a non-resident trust to be resident in Canada for a number of purposes. Subsection 94(4) provides that the deemed residence of a trust under paragraph 94(3)(*a*) does not apply for certain enumerated purposes.

Paragraph 94(4)(*b*) is amended to provide that paragraph 94(3)(*a*) will also not apply for purposes of the definition "investment fund" in subsection 251.2(1). An investment fund can satisfy the Canadian residence requirement set out in that definition only if it is factually resident in Canada.

For further information, see the commentary on the definition "investment fund" in subsection 251.2(1).

This amendment is deemed to have come into force on March 21, 2013, except that for taxation years that end before 2016 it is to be read without reference to the definition "qualified disability trust" in subsection 122(3).

Mutual fund trust – elected year-end

ITA
132.11(1)(*b*)

Section 132.11 generally allows a mutual fund trust to elect to have taxation years that end on December 15, rather than on December 31. If a trust makes the election, each taxation year of the trust is, subject to limited exceptions, deemed by paragraph 132.11(1)(*b*) to end at the end of December 15 of the calendar year following the calendar year in which it began.

Paragraph 132.11(1)(*b*) is amended to add to the list of exceptions references to paragraphs 128.1(4)(*a*) and 249(4)(*a*). As a result, in the event that the trust ceases to be resident in Canada or is subject to a loss restriction event, those paragraphs apply to deem the trust's taxation year to end at the time determined under those paragraphs and not on December 15.

This amendment is deemed to have come into force on March 21, 2013.

Definitions

ITA
248(1)

Subsection 248(1) of the Act defines various terms for the purposes of the Act.

"balance-due day"

A taxpayer's balance-due day is the day by which the taxpayer is normally required to pay any balance of taxes payable under Part I for the year. Paragraph (*a*) of the definition "balance-due day" provides that the balance-due day of a trust for a taxation year is the day that is 90 days after the end of year.

Paragraph (*a*) of the definition is amended to introduce rules that apply in determining the balance-due day of a trust that is subject to a loss restriction event at a particular time. In this case, paragraph 249(4)(*a*) deems the trust's taxation year (the "pre-LRE year") that otherwise includes the particular time to end immediately before the particular time.

Under new subparagraph (*a*)(i) of the "balance due-day" definition, the balance-due day for the trust's pre-LRE year is, if the trust's following taxation year ends in the same calendar year as the pre-LRE year, the day that is the balance-due day for that immediately following taxation year. For example,

- If the trust's following taxation year ends on December 31 of the calendar year in which the pre-LRE year ends, its balance-due day for the pre-LRE year is the day that is 90 days after that following taxation year (*i.e.*, in effect, its ordinary balance-due day as determined under subparagraph (*a*)(iii) of the definition). Similarly, in the case of a mutual fund trust that has elected for a December 15 year-end, if the trust's following taxation year ends on December 15 of the calendar year in which the pre-LRE year ends, the trust's balance-day for the pre-LRE year is the day that is 90 days after that following taxation year.
- If the trust's following taxation year ends in the same calendar year but at a time other than December 15 or December 31 (*i.e.*, because the trust is subject to a deemed year-end under another income tax provision or, for the 2016 and later taxation years, because the trust is a graduated rate estate without a calendar year taxation year), then the trust's balance-due day for its pre-LRE tax year is the balance-due day for that following taxation year (as determined under subparagraph (*a*)(iii) of the definition).
- If the trust is subject to two or more successive loss restriction events in a calendar year and the successive pre-LRE years and the first following taxation year ends in that calendar year, the trust's balance-due day for the pre-LRE years is its balance-due day for that first following taxation year (as determined under subparagraph (*a*)(iii) of the definition).

New subparagraph (*a*)(ii) of the "balance due-day" definition applies in the unusual case where the trust's pre-LRE year and the following taxation year do not end in the same calendar year. In this case, the trust's balance-due day for the pre-LRE year is the day that is:

- If the trust is a mutual fund trust and the pre-LRE ends in a calendar year at a time after the end of the trust's taxation year that ended on December 15 of that calendar year (because of an election under paragraph 132.11(1)(*a*)), 90 days after the end of that December 15 taxation year.
- In any other case (*i.e.*, for the 2016 and later taxation years, where the trust is a graduated rate estate without a calendar year taxation year), 90 days after the end of the calendar year in which the pre-LRE year ends.

Subparagraphs (*a*)(i) and (ii) of the definition apply in conjunction with subsection 251.2(7). Together those provisions are intended to provide that the time at which the income taxes payable, and any returns required to be made, under Part I (and certain other income tax rules) by a trust, in respect of a pre-LRE year, is determined as though the loss restriction event had not resulted in the pre-LRE year ending immediately before the loss restriction event. Those provisions do not, however, suspend the requirements to pay those amounts and to make those filings. In cases where the requirements are not met, the ordinary interest and penalty provisions continue to apply. For further information, see the commentary on subsection 251.2(7).

Consequential on the introduction of subparagraphs (*a*)(i) and (ii), subparagraph (*a*)(iii) now defines the balance-due day for a taxation year of a trust in cases where the trust is not subject to a loss restriction event. In this case, the balance-due day of the trust for a taxation year is the day that is 90 days after the end of the taxation year.

This amendment is deemed to have come into force on March 21, 2013.

Year-end on certain events

ITA
249(4)

Subsection 249(4) of the Act provides that if a taxpayer (*i.e.*, corporation or trust) is subject to a loss restriction event at any time, the taxpayer is deemed to have a year-end immediately before that time, and to start a new taxation year at that time. However, if that time is within seven days of the end of the taxpayer's preceding taxation year, paragraph 249(4)(*b*) permits the taxpayer (unless the taxpayer is subject to an intervening loss restriction event during those seven days) to elect to extend that preceding taxation year to include those additional days.

Paragraph 249(4)(*b*) is amended so that the election is not available where the taxpayer is a trust.

This amendment is deemed to have come into force on March 21, 2013.

Loss Restriction Event

ITA
251.2

Section 251.2 of the Act contains rules for determining when a taxpayer is subject to a loss restriction event. A taxpayer's ability to carry over certain undeducted amounts for income tax purposes is constrained if the taxpayer is subject to a loss restriction event.

Section 251.2 is amended to provide that the acquisition, or disposition, of equity in certain types of investment trusts will not be treated as a loss restriction event of the trusts if certain conditions are met.

These amendments are deemed to have come into force on March 21, 2013. However, if a trust so elects in writing and files the election with the Minister of National Revenue on or before the trust's filing-due date for its last 2014 taxation year, the amendments (other than new subsection 251.2(7)) are deemed to have come into force in respect of the trust:

- on the first day of the trust's first 2014 taxation year, if the election is to have paragraph 251.2(3)(*f*) apply to the trust only as of that day; and
- on the first day of the trust's first 2015 taxation year, if the election is to have paragraph 251.2(3)(*f*) apply to the trust only as of that day.

Definitions

ITA
251.2(1)

Subsection 251.2(1) of the Act contains definitions that apply for purposes of section 251.2. Two of those definitions are amended.

"investment fund"

An investment fund at any particular time means a trust that meets two sets of requirements as of the particular time.

The first requirement must be met throughout the period that ends at the particular time and that starts at the beginning of the calendar year following the year in which the trust was created (or, in the case of a trust that existed at the time the trust loss restriction event rules were first announced on March 21, 2013, that starts on that date). The requirement is that an outstanding class of units of the trust has been qualified for distribution, or lawfully distributed, to the public as described in paragraph 4801(*a*) of the *Income Tax Regulations*. In effect, the trust must, on an ongoing basis, be subject to the investor protections provisions of federal or provincial securities laws.

The second set of requirements must be met at all times at which the trust exists at and before the particular time (or, in the case of a trust that existed at the time that the trust loss restriction event rules were first announced on March 21, 2013, at all times on and after that date until the particular time). These requirements are that the trust be a non-discretionary unitized trust that is factually resident in Canada and that the trust

- derive all or substantially all of its value, directly or indirectly, from any one or combination of cash, cash equivalents (including bank and credit union deposits), commodities and a diversified portfolio of securities;
- limit its undertaking to investing;
- not hold property that is used in carrying on a business or that is real property or resource property;
- not legally control, alone or as part of a group, a corporation; and

- not hold more than 20% of any class of securities of an issuer, unless
    - the issuer is a trust that is an investment fund, or
    - the total fair market value of the trust's property that is equity of the issuer does not exceed 10% of the issuer's equity value and the total fair market value of the trust's property that is liabilities of the issuer does not 10% of the total fair market value of all of the issuer's liabilities.

The final two requirements are subject to an anti-avoidance rule contained in paragraph 251.2(5)(*c*).

For further information, see the commentary on paragraphs 251.2(3)(*f*) and (5)(*c*) and subsection 251.2(7).

"majority interest beneficiary"

The definition "majority-interest beneficiary" in subsection 251.2(1) is amended so that it applies in section 251.2 with the same meaning as in subsection 251.1(3), but read without reference to the words "if any" in the definition in subsection 251.1(3). As a result, in section 251.2, a majority-interest beneficiary of a trust at any time means a person that is at that time both a beneficiary under the trust and a majority-interest beneficiary (as defined in subsection 251.1(3)) of the trust.

Loss restriction event

ITA
251.2(3)(*f*)

Subsection 251.2(3) of Act describes certain transactions and events in respect of which, for the purpose of determining whether a particular trust is subject to a loss restriction event, a person (or group of persons) is deemed not to become a majority-interest beneficiary (or majority-interest group of beneficiaries) of the particular trust.

Paragraph 251.2(3)(*f*) of the Act is amended to provide that the acquisition or disposition of equity in a trust that is an investment fund is not a loss restriction event of the trust. This result is subject to the requirement that the acquisition or disposition, as the case may be, not be part of a series of transactions or events under which the trust ceases to qualify as an investment fund.

For further information, see the commentary on the definition "investment fund".

Trusts – special rules of application

ITA
251.2(5)(*c*)

Subsection 251.2(5) of the Act contains rules of application for the purpose of determining whether a trust is subject to a loss restriction event at any time.

New paragraph 251.2(5)(*c*) contains an anti-avoidance rule that applies in determining whether a trust is an investment fund. To qualify as an investment fund a trust must not control, alone or as part of a group, a corporation, and the trust must not hold more than 20% of the securities of any

class of securities of an issuer (or hold, measured on a fair market value basis, more than 10% of the equity or liabilities of the issuer). Paragraph 251.2(5)(*c*) provides, in respect of both of those requirements, that the requirement is deemed not be met if a person acquires a security of an issuer and it can reasonably be concluded that one of the reasons for the acquisition or any agreement in respect of the acquisition was to cause the requirement to be met.

Filing and other deadlines

ITA
251.2(7)

New subsection 251.2(7) applies to various deadlines of a trust that is subject to a loss restriction event and, as a result of which, paragraph 249(4)(*a*) of the Act applies to deem the trust's taxation year (the "pre-LRE year") to end before the loss restriction event. Subsection 251.2(7), applies in conjunction with new paragraphs (*a*)(i) and (ii) of the definition "balance-due day" in subsection 248(1). Together, those provisions are intended to provide that the time at which the income taxes payable, and any returns required to be made, under Part I (and certain other income tax rules) by a trust, in respect of a pre-LRE year, is determined as though the loss restriction event had not resulted in the pre-LRE year ending before the loss restriction event. Those provisions do not, however, eliminate the requirements to pay those amounts and to make those filings. In cases, where the requirements are not met, the ordinary interest and penalty provisions under the income tax rules continue to apply.

Subsection 251.2(7) provides that the filing-due date by which the trust must file with the Minister of National Revenue the trust's return of income for a pre-LRE year of the trust, and send its T3 information slips in respect of the pre-LRE year, is its balance-due day for the year (*i.e.*, the day by which the trust is normally required to pay any balance of taxes payable under Part I for a taxation year). New subparagraphs (*a*)(i) and (ii) of the amended definition "balance-due day" in subsection 248(1) contain rules that apply in this case. Generally, the trust's balance-due day for a pre-LRE year of the trust is the balance-due day of its ordinary taxation year (*i.e.*, 90 days after what would have been the trust's taxation year-end if subsection 249(4) did not apply). For further information, see the commentary on the definition "balance-due day" in subsection 248(1).

Subsection 251.2(7) applies to a number of other requirements, that must ordinarily be met within 90 days after the end of the taxation year to which they relate, in respect of a pre-LRE year of the trust. Specifically, the deadlines for the following requirements are extended to the trust's balance-due day for the pre-LRE year:

- the requirement to send an NR4 return (where the deadline for doing so is determined under subsection 202(8) of the *Income Tax Regulations*);
- the requirement under subsection 210.2(5) that the trust include a T3 Schedule 10 return required in respect of Part XII.2 tax with its T3 tax return for the pre-LRE year;
- where the trust is a registered investment, its requirement under subsection 204.7(1) to file a T3RI return under Part X.2 of the Act; and

- the requirement under subsection 132(6.1) of the Act that the trust, in order to elect to be treated as a mutual fund trust from the beginning of its first taxation year to the time at which it first becomes a mutual fund trust, must become a mutual fund trust within 90 days after the end of the trust's first taxation year.

Subsection 251.2(7) also provides that in computing interest on a mutual fund trust's capital gains refund for a pre-LRE year, the relevant period will be determined by reference to the later of the trust's balance-due day for the pre-LRE year and, in cases where the T3 tax return for the pre-LRE year is filed after that day, the day on which the return is filed.

This amendment is deemed to have come into force on March 21, 2013.

Investments in limited partnerships

ITA
253.1

Section 253.1 of the Act applies for specified provisions of the Act and Regulations where a trust or corporation holds an interest as a limited partner in a limited partnership. It provides that the trust or corporation will not, solely because of its acquisition and holding of the limited partnership interest, be considered to carry on any business or other activity of the partnership.

Section 253.1 is amended so that it applies for the purpose of the definition "investment fund" in subsection 251.2(1), subparagraph (*b*)(iv) of which requires that a trust, in order to qualify as an investment fund, limit its undertaking to the investing of its funds in property.

This amendment is deemed to have come into force on March 21, 2013.

Deemed exercise of right

ITA
256(8)

Subsection 256(8) applies – if a taxpayer acquires a right referred to in paragraph 251(5)(*b*) with respect to shares, and it can reasonably be concluded that one of the main purposes of the acquisition of the right is to avoid the application of certain income tax provisions that are triggered on an acquisition of control – to treat the taxpayer as having exercised the right in question for a number of provisions for the purpose of determining whether control of the relevant corporation is acquired or whether the corporation is controlled by any person or group of persons. For example, in any case where subsection 256(8) applies in respect of a right acquired at any time, the right is deemed to be exercised at that time for the purpose of determining whether control of the relevant corporation is acquired for purposes of paragraph 251.2(2)(*a*), which determines for purposes of the Act the time at which a corporation is subject to a loss restriction event.

The list of the provisions in the post-amble to subsection 256(8) is amended by adding a reference to paragraph (*b*) of the definition "investment fund" in subsection 251.2(1), which provides that a trust is disqualified as an investment fund under section 251.2 if it controls, alone or as part of a group, a corporation.

These amendments are deemed to have come into force on March 21, 2013.

Estate Donations and Spousal and Common-law Partner (and similar) Trusts

Taxable Capital Gain – Gift of Securities

ITA
38(*a.1*)(ii)

Subparagraph 38(*a.1*)(ii) of the Act, as it applies for the 2016 and later taxation years, provides that a taxpayer's taxable capital gain from the disposition of a qualifying security is nil if the disposition by the taxpayer is deemed by section 70 to have occurred immediately before the taxpayer's death and the security is the subject of a gift, to which subsection 118.1(5.1) applies, that is made by the taxpayer's graduated rate estate. For this purpose, a qualifying security is a security referred to in subparagraph 38(*a.1*)(i), including, for example, a share listed on a designated stock exchange and a unit of a mutual fund trust.

Clause 38(*a.1*)(ii)(B) is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the subparagraph to the taxpayer's graduated rate estate with a reference to the taxpayer's estate. The effect of these amendments is that subparagraph 38(*a.1*)(ii) applies to a gift if the other requirements of the subparagraph are met and:

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or
- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

For further information, see the commentary on subsection 118.1(5.1).

This amendment applies to the 2016 and subsequent taxation years.

Taxable Capital Gain – Ecological Gift

ITA
38(*a.2*)(ii)

Subparagraph 38(*a.2*)(ii) of the Act, as it applies for the 2016 and later taxation years, provides that a taxpayer's taxable capital gain from the disposition of a property is nil if the disposition by the taxpayer is deemed by section 70 to have occurred immediately before the taxpayer's death and the property is the subject of an ecological gift, to which subsection 118.1(5.1) applies, that is made by the taxpayer's graduated rate estate to a qualified donee (other than a private foundation).

Clause 38(*a.2*)(ii)(B) is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the subparagraph to the taxpayer's graduated rate estate with a reference

to the taxpayer's estate. The effect of these amendments is that subparagraph 38(*a.2*)(ii) applies to a gift if the other requirements of the subparagraph are met and:

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or
- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

For further information, see the commentary on subsection 118.1(5.1).

This amendment applies to the 2016 and subsequent taxation years.

Capital Gain – Gift of Cultural Property

ITA
39(1)(*a*)(i.1)

Paragraph 39(1)(*a*) of the Act describes a taxpayer's capital gain for a taxation year from the disposition of property. A taxpayer's gain from the disposition of property described in any of subparagraphs 39(1)(*a*)(i) to (v) does not give rise to a capital gain. Subparagraph 39(1)(*a*)(i.1) describes certified cultural property that is disposed of to designated institutions and public authorities. Under clause 39(1)(*a*)(i.1)(B), as it applies for the 2016 and later taxation years, a taxpayer has no capital gain from the disposition of such a property if the disposition is deemed by subsection 70 to have occurred and the property is the subject of a gift, to which subsection 118.1(5.1) applies, that is made by the taxpayer's graduated rate estate to an institution that is, at the time the gift is made by the estate, a designated institution or public authority.

Clause 39(1)(*a*)(i.1)(B) is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the clause to the taxpayer's graduated rate estate with a reference to the taxpayer's estate. The effect of these amendments is that clause 39(1)(*a*)(i.1)(B) applies to a gift if the other requirements of the subparagraph are met and:

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or
- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

For further information, see the commentary on subsection 118.1(5.1).

This amendment applies to the 2016 and subsequent taxation years.

Deduction in Computing Income of Trust

ITA
104(6)(*b*)

Subsection 104(6) generally permits a trust to deduct, in computing its income for a taxation year, an amount not exceeding the portion of its income otherwise determined for the year that became payable in the year to a beneficiary under the trust. Paragraph 104(6)(*b*) applies to trusts in cases where paragraphs 104(6)(*a*) to (*a.4*) do not apply.

Paragraph 104(6)(*b*), as it applies for the 2016 and later taxation years, calculates the maximum deductible amount under that paragraph as the formula A – B. The description of A of that formula is the part of the trust's income for the year – determined without reference to the deductions under subsection 104(6) and (12) – that became payable to, or was included under subsection 105(2) in the income of, a beneficiary. Subparagraph (i) of the description of B of the formula denies a trust a deduction for any part of its income that became payable to a beneficiary, other than an individual whose death determines a day of the trust under paragraph 104(4)(*a*) or (*a.4*), on or before the day of that death. Those trusts are *alter ego* trusts, joint spousal and common-law partner trusts, post-1971 spousal and common-law partner trusts and trusts to which property has been transferred by the beneficiary in circumstances described in subparagraph 73(1.02)(*b*)(ii) or subsection 107.4(1).

Subparagraph (i) of the description of B of the formula is amended so that the deduction denial under that subparagraph applies to a trust in computing its income for a taxation year if the death of the individual whose death determines a day of the trust under paragraph 104(4)(*a*) or (*a.4*) has not occurred before the start of the year. This amendment is consequential on new paragraph 104(13.4)(*b.1*). The amendment ensures that, for the trust's taxation year that ends because of paragraph 104(13.4)(*a*) applying in respect of the death of a particular individual, no deduction is available under subsection 104(6) in respect of any part of the trust's income for the particular year except to the extent that

- the income become payable in the year to the particular individual before the particular individual's death (or, in the case of a joint spousal or common-law partner trust in which the particular individual's death follows the death of the other individual in the same taxation year of the trust, the income became payable in the year to either of those individuals before their respective deaths); or
- in the case of a testamentary post-1971 spousal or common-law partner trust, paragraph 104(13.4)(*b*) and (*b.1*) apply with the result that the income is deemed to have become payable by the trust to the particular individual.

This amendment applies to the 2016 and subsequent taxation years.

Death of a Beneficiary – Spousal and Similar Trusts

ITA
104(13.4)

Subsection 104(13.4) of the Act provides rules that apply, for the 2016 and later taxation years, to a trust for a particular taxation year of the trust if a particular beneficiary under the trust dies on a day in the particular year and that day is, as a result of the death, a day determined in respect

of the trust under any of paragraphs 104(4)(*a*), (*a.1*) and (*a.4*). Those trusts are *alter ego* trusts, joint spousal and common-law partner trusts, spousal and common-law partner trusts, and trusts to which property has been transferred by the beneficiary in circumstances described in subparagraph 73(1.02)(*b*)(ii) or subsection 107.4(1).

Paragraph 104(13.4)(*a*) deems the particular year to end at the end of the day on which that death occurs. Paragraph 104(13.4)(*b*) deems the trust's income for the particular year to have become payable to the particular beneficiary in the particular year, with the result that all of the trust's income for the particular year is required by subsection 104(13) to be included in computing the particular beneficiary's income for the beneficiary's taxation year (*i.e.*, the beneficiary's final taxation year) in which the particular year ends.

Paragraph 104(13.4)(*b*) is amended, and paragraph 104(13.4)(*b.1*) is added, to provide that paragraph 104(13.4)(*b*) does not apply to a trust unless:

- the particular beneficiary is resident in Canada immediately before the particular beneficiary's death;
- the trust is immediately before the death a testamentary trust that is a post-1971 spousal or common-law partner trust and that was created by the will of a taxpayer who dies before 2017;
- the trust and the particular individual's graduated rate estate jointly elect in prescribed form that paragraph (*b*) apply; and
- the T3 income tax return of the trust for the particular year, and the T1 income tax return of the individual for the individual's year of death, both include a copy of the joint election.

The information requirements in the prescribed form containing the joint election will include a requirement for the individual's Social Insurance Number and the trust's tax account number (*i.e.*, the number found in box 14 of the T3 information slip and also identified as the "Trust account number" on the first page of the trust's T3 return of income).

Paragraph 104(13.4)(*c*) provides that the filing-due date, by which a trust must file with the Minister of National Revenue the trust's return of income under Part I for the particular year and issue its T3 information slips in respect of the particular year, is the day that is 90 days after the calendar year in which the particular year ends. Under that paragraph, the trust's balance-due day, by which the trust is normally required to pay any balance of taxes payable for a taxation year, is also the day that is 90 days after the calendar year in which the particular year ends.

Paragraph 104(13.4)(*c*) is amended to replace a reference to paragraph (*a*) of the definition "balance-due day" in subsection 248(1) with a reference to subparagraph (*a*)(iii) of that definition. This amendment is consequential on an amendment to the definition "balance-due day".

These amendments apply to the 2016 and subsequent taxation years.

Definitions – Charitable Donations Tax Credit

ITA
118.1(1)

Section 118.1 of the Act provides a tax credit to individuals in respect of certain gifts made to qualified donees or, in the case of certain gifts of cultural property, to certain designated institutions or public authorities. Subsection 118.1(1) contains a number of definitions that apply for the purposes of section 118.1.

"total charitable gifts"

Subparagraph (*c*)(i) of the definition "total charitable gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total charitable gifts of an individual other than a trust. One of the requirements is, where the gift is made by the individual's graduated rate estate, that subsection 118.1(5.1) apply to the gift.

Clause (*c*)(i)(C) of the definition is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the clause to the taxpayer's graduated rate estate with a reference to the taxpayer's estate. Amended clause (*c*)(i)(C) of the definition continues to require that the gift be one to which subsection 118.1(5.1) applies. However, the effect of these amendments is that the requirement in clause (*c*)(i)(C) of the definition is met if

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or
- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

Subparagraph (*c*)(ii) of the definition "total charitable gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total charitable gifts of a trust.

Clause (*c*)(ii)(C) of the definition is introduced to provide that, subject to the other conditions of the definition, a trust's total charitable gifts for a particular taxation year includes the eligible amount of a gift if:

- the end of the particular year is determined under paragraph 104(13.4)(*a*) – *i.e.*, a beneficiary under the trust dies on a day in the particular year and that day is, as a result of the death, a day determined in respect of the trust under any of paragraphs 104(4)(*a*), (*a.1*) and (*a.4*), meaning the trust is an *alter ego* trust, joint spousal and common-law partner trust, spousal and common-law partner trust, or a trust to which property has been transferred by the beneficiary in circumstances described in subparagraph 73(1.02)(*b*)(ii) or subsection 107.4(1);
- the gift is made after the particular year and on or before the trust's filing-due date (as determined under paragraph 104(13.4)(*c*)) for the particular year – *i.e.*, the gift is made

on or before the day that is 90 days after the end of the calendar year in which the death occurs; and

- the subject of the gift is property that the trust held at the time of the death, or property substituted for that property.

This amendment permits the trust to allocate the eligible amount of the gift among any of (i) the trust's taxation year in which the gift is made (*i.e.*, under clause (*c*)(ii)(A) of the definition), (ii) any of the 5 following taxation years (*i.e.*, under clause (*c*)(ii)(A) of the definition), or (iii) the trust's taxation year that ends as determined under paragraph 104(13.4)(*a*) (*i.e.*, under clause (*c*)(ii)(C) of the definition). This allocation is subject to the general limitation in the definition that an eligible amount is included in an individual's total charitable gifts for a taxation year only to the extent that it is not otherwise included in determining a tax credit claimed under subsection 118.1(3) by the individual, or by any other individual, for any taxation year.

For further information, see the commentary on subsections 118.1(5.1).

These amendments apply to the 2016 and subsequent taxation years.

"total cultural gifts"

Subparagraph (*c*)(i) of the definition "total cultural gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total cultural gifts of an individual other than a trust. One of the requirements is, where the gift is made by the individual's graduated rate estate, that subsection 118.1(5.1) apply to the gift.

Clause (*c*)(i)(C) of the definition is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the clause to the taxpayer's graduated rate estate with a reference to the taxpayer's estate. Amended clause (*c*)(i)(C) of the definition continues to require that the gift be one to which subsection 118.1(5.1) applies. However, the effect of these amendments is that the requirement in clause (*c*)(i)(C) of the definition is met if

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or

- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

Subparagraph (*c*)(ii) of the definition "total cultural gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total cultural gifts of a trust.

Clause (*c*)(ii)(C) of the definition is introduced to provide that, subject to the other conditions of the definition, a trust's total cultural gifts for a particular taxation year includes the eligible amount of a gift if:

- the end of the particular year is determined under paragraph 104(13.4)(*a*) – *i.e.*, a beneficiary under the trust dies on a day in the particular year and that day is, as a result of the death, a day determined in respect of the trust under any of paragraphs 104(4)(*a*),

(*a.1*) and (*a.4*), meaning the trust is an *alter ego* trust, joint spousal and common-law partner trust, spousal and common-law partner trust, or a trust to which property has been transferred by the beneficiary in circumstances described in subparagraph 73(1.02)(*b*)(ii) or subsection 107.4(1);

- the gift is made after the particular year and on or before the trust's filing-due date (as determined under paragraph 104(13.4)(*c*)) for the particular year – *i.e.*, the gift is made on or before the day that is 90 days after the end of the calendar year in which the death occurs; and
- the subject of the gift is property that the trust held at the time of the death, or property substituted for that property.

This amendment permits the trust to allocate the eligible amount of the gift among any of (i) the trust's taxation year in which the gift is made (*i.e.*, under clause (*c*)(ii)(A) of the definition), (ii) any of the 5 following taxation years (*i.e.*, under clause (*c*)(ii)(A) of the definition), or (iii) the trust's taxation year that ends as determined under paragraph 104(13.4)(*a*) (*i.e.*, under clause (*c*)(ii)(C) of the definition). This allocation is subject to the general limitation in the definition that an eligible amount is included in an individual's total cultural gifts for a taxation year only to the extent that it is not otherwise included in determining a tax credit claimed under subsection 118.1(3) by the individual, or by any other individual, for any taxation year.

For further information, see the commentary on subsections 118.1(5.1).

These amendments apply to the 2016 and subsequent taxation years.

"total ecological gifts"

Subparagraph (*c*)(i) of the definition "total ecological gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total ecological gifts of an individual other than a trust.

Clause (*c*)(i)(A) of the definition "total ecological gifts", as it applies for the 2016 and later taxation years, is amended to correct a drafting error introduced by a previous amendment. The reference in that clause to "five preceding taxation years" is replaced with "10 preceding taxation years".

Clause (*c*)(i)(C) of the definition is amended, consequential on amendments to subsection 118.1(5.1), to replace the reference in the clause to the taxpayer's graduated rate estate with a reference to the taxpayer's estate. Amended clause (*c*)(i)(C) of the definition continues to require that the gift be one to which subsection 118.1(5.1) applies. However, the effect of these amendments is that the requirement in clause (*c*)(i)(C) of the definition is met if

- the gift is made no more than 36 months after the taxpayer's death by the taxpayer's graduated rate estate, or
- the gift is made more than 36 months, but no more than 60 months, after the taxpayer's death by the taxpayer's former graduated rate estate (*i.e.*, where the taxpayer's estate ceases to be the taxpayer's graduated rate estate because it remains in existence for more than 36 months after the taxpayer's death and, at the time the gift is made by the estate, the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate).

Subparagraph (*c*)(ii) of the definition "total ecological gifts", as it applies for the 2016 and later taxation years, sets out part of the requirements for an eligible amount of a gift to be included in the total ecological gifts of a trust.

Clause (*c*)(ii)(C) of the definition is introduced to provide that, subject to the other conditions of the definition, a trust's total ecological gifts for a particular taxation year includes the eligible amount of a gift if:

- the end of the particular year is determined under paragraph 104(13.4)(*a*) – *i.e.*, a beneficiary under the trust dies on a day in the particular year and that day is, as a result of the death, a day determined in respect of the trust under any of paragraphs 104(4)(*a*), (*a.1*) and (*a.4*), meaning the trust is an *alter ego* trust, joint spousal and common-law partner trust, spousal and common-law partner trust, or a trust to which property has been transferred by the beneficiary in circumstances described in subparagraph 73(1.02)(*b*)(ii) or subsection 107.4(1);
- the gift is made after the particular year and on or before the trust's filing-due date (as determined under paragraph 104(13.4)(*c*)) for the particular year – *i.e.*, the gift is made on or before the day that is 90 days after the end of the calendar year in which the death occurs; and
- the subject of the gift is property that the trust held at the time of the death, or property substituted for that property.

This amendment permits the trust to allocate the eligible amount of the gift among any of (i) the trust's taxation year in which the gift is made (*i.e.*, under clause (*c*)(ii)(A) of the definition), (ii) any of the 5 following taxation years (*i.e.*, under clause (*c*)(ii)(A) of the definition), or (iii) the trust's taxation year that ends as determined under paragraph 104(13.4)(*a*) (*i.e.*, under clause (*c*)(ii)(C) of the definition). This allocation is subject to the general limitation in the definition that an eligible amount is included in an individual's total ecological gifts for a taxation year only to the extent that it is not otherwise included in determining a tax credit claimed under subsection 118.1(3) by the individual, or by any other individual, for any taxation year.

For further information, see the commentary on subsections 118.1(5.1).

These amendments apply to the 2016 and subsequent taxation years.

Gifts by Graduated Rate Estate

ITA
118.1(5.1)

Subsection 118.1(5.1) applies, for the 2016 and later taxation years, to a gift made by an individual's graduated rate estate if the individual dies after 2015 and either the gift is an eligible transfer to which subsection 118.1(5.2) applies or the property that is the subject of the gift was acquired by the estate on and as a consequence of the death (or is property that was substituted for that property).

Subsection 118.1(5.1) is amended so that it also applies to a gift, that meets the other requirements of the subsection, that is made by the individual's estate at a time

- that is more than 36 months, but no more than 60 months, after the taxpayer's death;
- after which it ceased to be the taxpayer's graduated rate estate because the time is more than 36 months after the taxpayer's death; and
- at which the estate continues to meet the other requirements set out in the definition "graduated rate estate" in subsection 248(1) to be the taxpayer's graduated rate estate.

For further information, see the commentary on clauses 38(*a.1*)(ii)(B), 38(*a.2*)(ii)(B) and 39(1)(*a*)(i.1)(B) and clauses (*c*)(i)(C) the definitions "total charitable gifts", "total cultural gifts" and "total ecological gifts" in subsections 118.1(1).

This amendment applies to the 2016 and subsequent taxation years.